

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

MATTHEW P. RISSMAN, by next friend)

Susan Rissman,)

Petitioner,)

v.)

No. 1:07-cv-1531-SEB-JMS

SUPERINTENDENT, LaRue Carter)

Hospital,)

Respondent.)

Entry Discussing Request for a Certificate of Appealability


Petitioner Matthew Rissman, through his next friend, Susan Rissman, has filed a notice of appeal from the denial of his petition for a writ of habeas corpus. The notice of appeal (dkt 41) will be construed as a request for a certificate of appealability ("COA") pursuant to 28 U.S.C. § 2253(c).

"A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Where the petition was dismissed on procedural grounds, the procedural issue may be appended to the COA as an antecedent issue provided it, too, is substantial. *Owens v. Boyd*, 235 F.3d 356, 358 (7th Cir. 2000) ("If the prisoner's underlying constitutional objection to his conviction is itself substantial, then the district court may issue a certificate on that issue (even though the petition was denied without reaching it) and append the statutory ground as an antecedent issue to be resolved on appeal if it, too, is substantial." (citing *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000))).

There are no circumstances discernible from the pleadings or the record which satisfy these grounds. For the reasons which accompanied the dismissal of the habeas petition in the Entry of July 30, 2008, therefore, the request for the issuance of a certificate of appealability is **denied**.

IT IS SO ORDERED.

Date: 08/22/2008


SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

Distribution:

stephen.creason@atg.in.gov

Susan Rissman
5421 E. 11th Street
Indianapolis, IN 46219